IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1377 of 2006

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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NANDLAL KANAIYALAL SHAH - Petitioner(s)
Versus
DEPUTY COLLECTOR-MEHSANA & 1 - Respondent(s)

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Appearance :
MR JB DASTOOR for Petitioner(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 2.
SHRI PRACHCHHAK, ld. AGP for Respondent Nos.1 and 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 10/02/2006

ORAL JUDGMENT

1. Rule. Ms Prachchhak, learned AGP waives service of rule on behalf of the respondent Nos.1 and 2.

2. By way of this petition under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Deputy Collector, Stamp Duty Valuation, Mehsasna dated 26-6-2001 passed under Section 32-A of the Bombay Stamp Act (for short “the Act”) as well as the order/communication dated 2-12-2005 passed by the Deputy Collector, Stamp Duty Valuation, Mehsasna informing the petitioner that as the appeal under Section 32-B of the Act is filed after a period of 90 days, the reference application cannot be entertained as there is no provision to condone the delay and therefore, the application of the petitioner dated 26-10-04 to make a reference under Section 32-B of the Act is filed.

3. It appears form the record that with regard to the Document Registration No.980 dated 11-5-01 presented before the Sub Registrar, Visnagar, order under Section 32-A of the Act came to be passed on 26-6-01 by which the petitioner is directed to pay deficit stamp duty of Rs.4,21,243/- plus Rs.250/- by way of penalty in all Rs.4,21,493/-. It is the contention of the petitioner that the petitioner was not served with the copy of the notice of the said order till the communication by the Deputy Collector, Stamp Duty Valuation, Mehsasna dated 29-9-2004 and immediately on getting the certified copy, the petitioner submitted an application before the Deputy Collector, Stamp Duty Valuation, Mehsasna for making a reference under Section 32-B of the Act. However, the Deputy Collector, Stamp Duty Valuation, Mehsasna refused to make the reference for appeal under Section 32-B of the Act on the ground that the same is made after a period of 90 days. It is the contention of the

petitioner that from the date of receipt of the copy of the order dated 26-6-01, as such the application for reference would be within time and therefore, it is requested to set aside the order passed by the Deputy Collector, Stamp Duty Valuation, Mehsasna refusing to make the reference.

4. This court issued the notice upon the respondents by observing the contention on behalf of the petitioner that the impugned order was not served upon the petitioner and in response to the same, Shri Prachchhak, learned AGP appears on behalf of the respondents and has submitted that in fact the order was sent to the petitioner. However, as the same was sent through ordinary post, there is no acknowledgment and/or there is no proof of receiving the said order by the petitioner. In that view of the matter, without entering into any other larger question and in absence of any proof showing that the order dated

26-6-01 was in fact served upon the petitioner, the contention and submission on behalf of the petitioner that the order was not served upon the petitioner is required to be accepted and the application submitted by the petitioner for reference under Section 32-B of the Act is required to be considered as within limitation and the Deputy Collector, Stamp Duty Valuation, Mehsasna is required to be directed to make a reference to the Chief Revenue Controlling Authority, Gandhinagar for deciding the same under Section 32-B of the Act and the Chief Revenue Controlling Authority is required to be directed to decide the same in accordance with law and on merits subject to compliance with all other requirements as required under Section 32-B of the Act such as 25% amount due as pre-deposit etc.

5. For the reasons stated above, the petition partly succeeds. The impugned communication dated

2-12-2005 of the Deputy Collector, Stamp Duty Valuation, Mehsasna refusing to make a reference to the Chief Revenue Controlling Authority, Gandhinagar under Section 32-B of the Act is hereby quashed and set aside and the application for reference is directed to be treated as within a period of limitation and is directed to make a reference to the Chief Revenue Controlling Authority, Gandhinagar subject to compliance with the requirements as required under Section 32-B of the Act, such as deposit of 25% of amount due and payable as a pre-deposit etc. and on such compliance, the Chief Revenue Controlling Authority, Gandhinagar is directed to decide and dispose of the appeal in accordance with law and on merits. Rule is made absolute to the aforesaid extent. However, there will be no order as to costs. DS permitted.

(M.R.SHAH,J)

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